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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,246	12/28/2001	Carlo Enrico Speroni	217901US0	5029
22850	7590	05/05/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			MADSEN, ROBERT A	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 05/05/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/029,246

Applicant(s)

SPERONI, CARLO ENRICO

Examiner

Robert Madsen

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eb

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date September 23, 2003.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 18-26 in the response filed February 23, 2004 is acknowledged. The traversal is on the ground(s) that the examiner has not provided any support for the restriction because the examiner merely stated "the product can be made by packaging fish in a metal can with a modified atmosphere (not a wrapper) without cooking the vegetables and/or starches". This is not found persuasive, as evidenced by Tuomy (US 3264121). Tuomy teaches preparing meat and vegetable "ready to use" dishes (Column 1, lines 30-36), where the meat is a fish or shellfish and the vegetable is raw or cooked (i.e. Column 1, lines 50-60, Column 2, lines 54-66), and further the fish and supporting dish is sealed under a modified atmosphere in *either* a metal can or pouch (Column 3, lines 15-20). Tuomy teaches a product, like the one claimed in Group I, that could be made by another and materially different process than that claimed Group II (i.e. canning fish and uncooked vegetable in a modified atmosphere). The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 18-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 18 recites the limitation " the supporting dish" in step c and "the end-product" in step e. There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 18 and 21 rejected under 35 U.S.C. 102(b) as being anticipated by Kingham et al. (US 4721622).

7. Kingham et al. teach cooking supporting dish, bread-like casing, with a salted fish filling, inserted into a wrapper with a modified atmosphere, irradiating the wrapped product as recited in claim 21, and placing the wrapper in a housing, or carton as recited in claim 21 (Column 1, lines 50-66, column 2, lines 45-63, Column 4, lines 32-64, Column 7, line 44 to Column 8, line 36).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 18-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nojima (JP 591746570 A) in view of Niwa (JP 06078698 A)

10. Niwa teaches a method of preparing a sushi product based on broiled fish mixed with filling cooked rice, which would be boiled as recited in claim 20, broiled fish

11. Regarding claims 18-23,25,26, Nojima teaches a method of preparing a food product based on boiled fish, as recited in claim 19, mixed with other ingredients (e.g. sake), positioned onto boiled rice, as recited in claim 20, wherein both portions of the product are immersion with salt (i.e. salt is blended with the rice and soy sauce is blended with the fish during boiling) as recited in claim 21, inserted into a packaging comprising at least two housings, comprising the same product as recited in claims 22 and 23 in a modified atmosphere of nitrogen to preserve the freshness, as recited in claim 18 (See English JPO and Derwent Abstracts in light of the Figures). However, Nojima is silent in teaching a wrapping and packaging, as recited in claim 18, condiments packaged separate and different housings as recited in claim 25 or 26.

12. Niwa also teaches a method of preparing a sushi product comprising cooked rice with ingredients thereon wherein the sushi product is stored under nitrogen to preserve freshness (Abstract, Paragraph 38). Niwa further teaches wrapping and packaging the

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container wherein the wrapping step, as recited in claim 18, or adding a film, allows Niwa to easily provide the modified atmosphere (paragraphs 12-17). Therefore, it would have been obvious to modify the package of Nojima and include a wrapping step since Niwa teaches this enables one to easily provide/control the modified atmosphere at fill and one would have been substituting one conventional method of sealing a sushi container for another for the same purpose: preserving a sushi product in a nitrogen atmosphere.

13. Further, also like Nojima, Niwa teaches that two or more these sushi housing may be connected, but Niwa further teaches may also include different housings (i.e. items 3 are shaped differently from the sushi housing item 2 in the figures), as recited in claim 25, which may include a condiment, such as soy sauce or gari (pickled ginger), as recited in claim 26 (paragraph 20, 29-30). Therefore, it would have been obvious to modify Nojima and provide different housing in the package for condiments as recited in claims 25 and 26 since Nojima teaches soy sauce is a desired flavoring for the sushi product and Niwa teaches soy sauce can be provided in a different housing along with the sushi product in the package.

14. Regarding claim 24, although Nojima teaches multiple housing, Nojima is also silent in teaching different products in each housing. However, as discussed above in the rejection of claims 25 and 26, Niwa teaches including two distinct condiments (e.g. soy sauce and gari) in the same package along with the sushi, which would yield two distinctly flavored sushi products (paragraph 20, 29-30). Therefore, to provide two different sushi products, each in their own housing in the same package, would have been an obvious matter of design, depending on whether it was preferred to provide the

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consumer with a "final product" , wherein the two different flavors were already applied to the sushi, or an "intermediate product", wherein the two different condiments are provided for the consumer to apply, since Niwa teaches it is desirable to provide the consumer with two different flavors for sushi associated in the same package.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leu (US 5498432) teaches it is known to provide meat and vegetable kits with a separate flavoring packet in a modified atmosphere package. Udagawa et al. (JP 05219906) teach wrapping and packaging of raw fish positioned on top of cooked rice. Cochran et al. (US5747084) and Feldmeier et al. (US 6048558) teach conventional ready to assemble meal packages.


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761



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